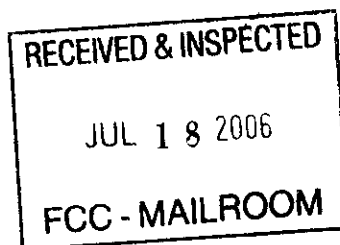


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Madison-Oneida BOCES**Fax**

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To: Federal Communications Commission **From:** Lisa Decker

Fax: 202-418-0187 **Pages:** 6

Phone: **Date:** 07/18/2006

Re: Letter of Appeal **CC:**

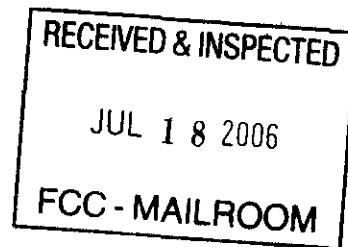
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• **Comments:**

June 17, 2006

VIA FAX (202-418-0187)

Letter of Appeal
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554



**Re: Letter of Appeal of Funding Commitment Decision Letter Issued
12/13/2005**
Applicant: Madison-Oneida BOCES
Form 471 Application No.: 401042
Funding Year: 2004 (07/01/04 – 06/30/2005)
Billed Entity No.: 14735
Funding Request No.: 1121894
CC Docket No. 02-6

Dear Sir or Madam:

On December 13, 2005, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") issued the above-referenced Funding Commitment Decision Letter that denied Applicant Madison-Oneida BOCES's request for universal service support funding for Internet Access from Time Warner. The basis for denial of Madison-Oneida BOCES's funding request was explained in the Funding Commitment Decision Letter as follows:

"FCC rules require that a contract for the products/services be signed and dated by both parties prior to the filing of the Form 471. This requirement was not met."

With this letter, Madison-Oneida BOCES hereby appeals the SLD's December 13, 2005 Funding Commitment Decision Letter. The basis for the appeal is supported by the following facts:

1. The Internet Contract with Time Warner was awarded by the Madison-Oneida BOCES Board on January 26, 2004, after the allowable contract award date of 1/6/2004, but before the filing of the 471. This award constituted a legal binding contract between both parties, as stated in the Legal Opinion from attorney Dennis Barrett. Please reference the following attachments that support these facts:
 - a. Written statement from the Madison-Oneida BOCES Board Clerk, dated 5/10/04, documenting the Board Resolution from the January 24, 2004 Board Meeting. The resolution to award Time Warner the contract for

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Internet service resulted from a formal RFP process administered by Broome-Tioga BOCES on behalf of Madison-Oneida BOCES, as well as other BOCES throughout the State.

- b. Legal Opinion regarding contract between Madison-Oneida BOCES and Time Warner Cable from the Ferrara, Fiorenza, Larrison, Barrett & Reitz Law Firm, dated June 30, 2005. This opinion was written in response to a Selective Review inquiry.
2. Based on language incorporated in the FCC's Fifth Report and Order (FCC 04-190) released August 13, 2004, USAC is requiring that contracts be signed and dated by both the applicant and the service provider. USAC has indicated that contracts signed before October 13, 2004, which had only the applicant's signature, can be brought into compliance by getting the service provider's signature now. The contract in question had been signed by both parties, in fact, prior to October 13, 2004. Therefore, this contract was already compliant prior to this ruling.

Given the facts as stated above, we submitted this appeal to the denial of funding for Internet service to USAC. USAC denied this appeal per their letter dated May 19, 2006. However, the aforementioned facts and supporting documentation support our position on this application, and therefore, we are appealing to the FCC. We have paid for the services that we had contracted for in 2004-05 and are anxious to submit for reimbursement on behalf of our client school districts so that they may benefit from the original intent of the e-rate program, which was to allow schools and libraries in the United States to obtain affordable telecommunications and Internet access. Thank you for your consideration of this appeal. Your attention to this matter is greatly appreciated.

Please direct any questions regarding this Letter of Appeal to the following:

Lisa Decker
Director of Finance
Madison-Oneida BOCES
4937 Spring Road
Verona, New York 13478
(315) 361-5514 (Tel)
(315) 361-5595 (Fax)
ldecker@moboces.org

Respectfully submitted,

Lisa Decker

Lisa Decker

Attachments

cc: Joan Sotherden (Madison-Oneida BOCES)
Winston Himsworth (E-Rate Central)

FORM 471 # 412320

FRU # 1131341

MADISON ONEIDA

BOARD OF COOPERATIVE EDUCATIONAL SERVICES

"Enabling Learners to Excel"

4937 Spring Road, R.O. Box 168

Verona, New York 13478-0168

Phone 315-361-5510, Fax 315-361-5517

May 10, 2004

To Whom It May Concern:

At a special meeting of the Madison-Oneida Board of Cooperative Educational Services held January 26, 2004, the following resolutions were passed:

03/04-741 A motion was made by Engelbrecht and seconded by Costello to approve the Development Authority of the North Country Fiber Service Agreement on behalf of Jefferson-Lewis BOCES. There were 6 ayes and 0 nays. The motion carried.

APPROVE:
DEVELOPMENT
AUTHORITY OF THE
NORTH COUNTRY
FIBER SERVICE
AGREEMENT

03/04-742 A motion was made by Gustin and seconded by Lynch to approve the amended FiberTech Service Lease Agreement on behalf of Rome City School District. There were 6 ayes and 0 nays. The motion carried.

APPROVE:
FIBERTECH SERVICE
LEASE AGREEMENT

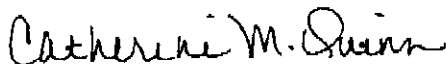
03/04-743 A motion was made by Engelbrecht and seconded by Thurston to award the Regional Telecommunications bid to all low bidders by district as presented. There were 6 ayes and 0 nays. The motion carried.

BID:
REGIONAL
TELECOMMUNICATIONS
BID

03/04-744 A motion was made by Engelbrecht and seconded by Costello to award the Internet Service Provider bid to Time Warner Cable with a one-year commitment beginning July 2004. There were 6 ayes and 0 nays. The motion carried.

BID:
INTERNET SERVICE
PROVIDER

Sincerely,



Catherine M. Quinn
District Clerk

- Request # 36.
p 1 of 2

FERRARA, FIORENZA, LARRISON, BARRETT & REITZ, P.C.

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June 30, 2005

Joan Sotherden, Director
Mohawk Regional Information Center
4937 Spring Road
P. O. Box 168
Verona, New York 13478-0168

**Re: Opinion Regarding Contract Between Madison-Oneida BOCES and
Time Warner Cable**

Dear Ms. Sotherden:

You have asked that I state our legal opinion to be provided to the School & Libraries Division with respect to the BOCES E-Rate reimbursement for the Time Warner Cable ISP Contract (the "Contract").

The Contract was the result of an RFP process administrated by Broome-Tioga BOCES, RFP No. 11-7-03 RIC ISP. The date of submission of RFP responses pursuant to that request was December 8, 2003. Broome-Tioga administered the RFP on behalf of a number of BOCES throughout the State, including Madison-Oneida BOCES.

You have provided me with proof that the Madison-Oneida BOCES Board adopted a resolution awarding this contract to Time Warner Cable on January 26, 2004. I further understand that Madison-Oneida BOCES and Time Warner Cable signed a formal agreement thereafter, on or about May 13, 2004.

The question asked is whether the bid award by the Board on January 26, 2004, resulted in a legally binding contract between Madison-Oneida BOCES and Time Warner Cable for provision of the ISP services. It is our opinion that the award by the Board on that day did result in a binding contract.

The RFP administered by Broome-Tioga BOCES invited Time Warner Cable and others to submit proposals to provide internet services provider services to various BOCES throughout the state, including Madison-Oneida BOCES. The RFP noted that each BOCES RIC would contract individually with the service provider. The responders to the RFP were required to provide a price

FERRARA, FIORENZA, LARRISON, BARRETT & REITZ, P.C.

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Joan Sotherden, Director
June 30, 2005
Page 2

for each BOCES, with one, three and five year terms, and a service level agreement as part of the proposal, and were also required to incorporate various other contract terms as specified in the RFP itself. The prices were required to be guaranteed for at least a year.

I have reviewed a copy of the Response from Time Warner Cable, which included prices for installation and various capacity ISP loops for periods of one, three or five years to Madison-Oneida BOCES. A form of service level agreement was also attached along with substantial other information. In legal terms, this Response to the RFP was an *offer by Time Warner Cable* to enter into a contract with each of the BOCES listed, upon the terms of the RFP and the Response.

When the Board of Madison-Oneida BOCES awarded the bid to Time Warner Cable on January 26, 2004, it accepted the offer made by Time Warner Cable in that Response. An offer to enter into a contract, when accepted, constitutes a binding contract in accordance with its terms, as long as the essential terms of the contract are set forth. All of the essential terms were incorporated in the RFP and Response, needing only the action of the BOCES Board to make the contract binding on both Madison-Oneida BOCES and Time Warner cable.

The fact that the parties subsequently signed a formal Dedicated Access Service Agreement in May does not affect our opinion that the Contract was binding in January 2004. It is our opinion that the parties were bound to each other when the offer to enter into a contract made in the RFP process was accepted by the Board on January 26, 2004.

Please call if I can be of further assistance in this matter.

Very truly yours,

FERRARA, FIORENZA, LARRISON, BARRETT & REITZ, P.C.

Dennis T. Barrett

DTB/cam